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ABSTRACT

This paper argues that quality pre-law communication programs must be developed through an organized sustained effort in the speech communication field. The development of a pre-legal communication program is discussed in terms of three interrelated states: (1) the development of a specific academic program within the speech communication department in which students, faculty, and administrators can actually identify students as pre-law communication majors ; (2) the pre-law communication program needs to be correlated with other academic subjects helpful in developing the skills and insights useful for the study of law, while also being helpful for pursuing other practical vocational interests if one does not attend law school; and (3) the pre-law communication program should be supplemented by a series of related activities sponsored or encouraged by the speech communication department. Various activities are suggested, such as guest speakers, lectures, and interviews; video tapes; and joint law school activities. The paper concludes with a description of the potential benefits of establishing such a pre-law communication program. (TS)

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PRE-LAW COMMUNICATION PROGRAM: ITS RELEVANCE

Robert F. Forston

POTENTIAL

It is no secret that the legal profession has mushroomed. In fact, law is the fastest-growing profession in the nation. It is estimated that today's 385,000 lawyers will almost double by 1985. Students taking the Law School Admission Tests have increased by nearly 300 percent from 68,100 for the two-year period 1963-1964 to 257,700 students in 1973-1974. During the same comparison period, the total enrollment in law schools doubled. More than 116,500 persons are currently studying law--the largest single group in postgraduate professional education. In the 1974-1975 academic year, for the second consecutive year, not a single unfilled seat exists in the country's 158 ABA approved law schools. The admissions to law schools are at an all-time high--estimated at approximately 85,000 competing for only 37,700 openings.[3]

With such a proliferating interest in the study of law, the number of undergraduate stude who have seriously considered attending law school is undoubtedly many times larger than those enrolled in law school.[4] The "iceberg analogy" may be helpful to illustrate this interest in entering the legal profession. Currently the iceberg is rapidly expanding. We know that the iceberg will not continue indefinitely to expand at the same rate. We also know that it may even decrease somewhat in size sometime in the future, but it will continue to be of massive size. The tip of the iceberg represents those entering law school and the tip is currently expanding.

A pertinent question for those entering law school and those developing prelegal programs is--will we have too many lawyers in the near future? A special task force committee of the American Bar Association investigated this complex question in 1973 and unanimously found "no conclusive evidence to indicate that there are now or are likely to be in the foreseeable futu more legally trained men and women than can be satisfactorily and productively employed."[5] The Association of American Law Schools warns of some uncertainties regarding future employmen prospects for young lawyers but concluded: "There is still a substantial unfilled demand for legal services in the United States, and the extent of need for law-trained people in challenging work other than law practice is largely unexplored."[6] Another reason that lawyers are likely to remain in demand is because of recent U. S. Supreme Court rulings entitling ever person to an attorney, the ever-expanding civil and criminal litigation, and the soaring divor rates. "Going to court is our greatest indoor sport," says Professor Rosenberg of Columbia University, who is former president of the Association of American Law Schools.[7]

The largest unseen part of the iceberg represents four kinds of prospective law students: 1) undergraduates who intended to apply for law school during their senior year but became interested in another discipline; 2) undergraduates who took the Law School Admissions Test and realized that their LSAT score and grade point average were not high enough to succeed in law school; 3) undergraduates who applied for law school but were not accepted; and 4) those who have graduated and decided to work for a while before entering law school but never do.

Although the Association of American Law Schools neither recommends nor suggests a specified academic major, the general belief among undergraduate students, high school counselors, and college admissions personnel is that the fields of political science, business, English and history are the most appropriate academic majors to prepare one for law school. The official position of the Association of American Law Schools is that prelegal students should develop basic skills and insights in three areas:

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·Comprehension and expression in words
·Critical understanding of the human institutions and values with which the law deals
·Creative power in thinking
·The development of these fundamental capacities is not the monopoly of any one subject matter area, department or division.[8]

The Association continues:

> The questions is really not what courses to take at all. It is rather how to learn to think critically in verbal symbols.[9]

The Association, however, does *specifically* mention a number of topics and related activities pertaining to our field, i.e., communication language, persuasion, perception, listening, debate, reasoning requiring some explanation, problem-solving, interviewing, negotiation, and human behavior.[10] The Law School Admission Council also states:

> The lawyer must be able to communicate effectively in oral and written expression. Perhaps the central function of the lawyer, judge, and legislator is participation in a constant dialogue. . ..Both the formal roles of the lawyer. . .and the informal roles as cousellor and negotiator demand the highest skills of expression.[11]

The Council continues:

> Legal education. . .should be designed not just to equip students to solve today's immediate problems, but to provide a breadth of skills and perspectives adequate for solution of tomorrow's unanticipated problems, so insistence on contemporary relevance may be shortsighted. To become a lawyer in our time is an invitation to involvement.[12]

The above statements surely can be effectively adapted by the Speech Communication field t communicate the benefits which our discipline can provide for prelegal instruction. Communicat studies are *at least* as helpful as those disciplines traditionally associated with prelegal stu To live up to the claims of these benefits, however, we *must develop quality Pre-Law Communicat Programs* rather than merely doing what we have traditionally done with those interested in law. Having quality Pre-Law Communication Programs in many Speech Communication Departments across t country is likely to be healthy for us rather than detrimental because of the competition. Our common task is to change traditional beliefs about prelegal instruction and to generate interest in the benefits which our field offers. This task can best be accomplished in an organized sustained campaign rather than in isolated efforts.

Recent controversies about legal education may also be advantageous in demonstrating the potential benefits of Speech Communication study *prior* to and *during* law school training. Chief Justice Warren Berger spoke out aginst unskilled and incompetent trial lawyers. He charged that failure to train attorneys in advocacy skills has helped bring about "the low sta of American trail advocacy and a consequent diminution in the quality of our entire system of justice."[13] These charges are repeated at all levels of trial practice. Many judges in gener jurisdiction trial courts state that fewer than 25 percent of the lawyers appearing before the are "genuinely qualified."[14] Judge Edward Tamm puts the figure at 2 percent.[15] Justice Berge prefers a safer estimate of one-third to one-half of the lawyers who appear in serious cases are *not qualified* to render fully adequate representation.[16] Many of those who practice befor the U. S. Supreme Court are not qualified; Justice William O. Douglas claims that one-third are incompetent.[17]

Law Schools have not done much in promoting the theory and skills of lawyering--interview clients, nogotiating settlements, counseling and arbitrating as opposed to knowledge of the la It is assumed that these skills will be acquired later.[18] Perhaps, our field can expand the number of course offerings in law schools curricula to help train law students in communicatio theory and skills practical for lawyers.[19] Such an expansion would probably have favorable benefits for our prelaw programs.

SUPPORT OF SPEECH COMMUNICATION FIELD

To change the general perceptions about what is an appropriate major for pursuing the stu of law, our field should establish two policies for a common sustained campaign: First, stimulate individual Departments of Speech Communication to develop quality pre-law programs; and second, stimulate the leadership of the national and regional associations to use influence actively in showing the compatibility with and benefits of our field regarding the study of law. This combined effort is much more likely to be successful and more likely to create synergetic results as compared to attempts by a few isolated departments in publicizing pre-law communication.

I would be remiss if I did not recognize the beginnings which have been made in both of the above recommended policies. For example, a few departments have gone beyond offering a "Courtroom Rhetoric" course or appealing to pre-law students to sharpen their advocacy skills in the forensic program.[20] Moreover, the national and regional associations have been quite willing to sponsor convention programs and committees on the topic of communication and law. Nearly every association has regularly sponsored one or more communication and law programs for the past two to three years. Last year the American Forensic Association appointed a six-membe Legal Communication Committee to encourage legal communication events in forensic tournaments. The Speech Communication Association will consider at its next council meeting establishing a Commission on Communication and Law. The Freedom of Speech Commission has been operational for many years.

DEVELOPING A PRE-LAW PROGRAM

Developing a pre-legal communication program requires more than a single specialized cours dealing with the law or more than including pre-law students in the forensic program. The futu success of such a program is probably dependent on a sustained campaign.

The campaign should consist of at least three interrelated stages: *Stage One:* A quality program requires an actual substantive program; hence, requires a change of thinking on the par of the departmental faculty, university administrators, recruiters, high school personnel, and students. The most effective and expedient way to accomplish a new perception is to establish a *specific* academic program within the Speech Communication Department in which students, faculty, and administrators can actually identify students as "Pre-Law Communication Majors." This new identification can be most effective in promoting the program.

The Pre-Law Communication Program should consist of three parts: First, a series on *content courses* in Speech Communication should emphasize judicial communication ideas. Some of these courses may be restructured from reasoning and argumentation, nonverbal communication and organizational communication courses, in that units and examples of legal communication may be added. A public speaking for lawyers course is unlikely to inspire many students to become

majors. A specialized course on judicial communication theory might be developed for pre-l students.[21] However, we must guard against offering too many law-related courses since pre- legal instruction ought to encourage a breadth of knowledge.

A word of warning from the Association of American Law Schools is pertinent for all professors who are frustrated lawyers and want to teach substantive "law" in specialized und graduate law courses:

> So-called "law" courses in undergraduate instruction should not be taken [or taught] for the purpose of learning [or teaching] the "law." They are not. . .likely to be effective, as education for lawyers, although they c.. be very helpful in undergraduate curriculum. . .for helping students estimate whether they might be interested in law study.[22]

Our undergraduate law-related courses should focus on the communication and decision-making which are inherent in all aspects of law.

Second, the Pre-Law Communication Program needs to be correlated with other academic su helpful in developing the skills and insights useful for the study of law, while also being helpful for pursuing other practical vocational interests if one *does not* attend law school. Contingency vocational planning is important since a substantial number of students never enter law school.

The Pre-Law Communication Program as described in the Drake University General Catalog consists of five areas:

Areas of Emphasis	*Percentages of Total Cours*
Academic Major (Speech Communication)	27
All University Requirements	12
Correlated Complement for Law School	35
Introduction to Legal Subjects (variable)	7 to 14
Electives (variable with legal area above)	19 to 12
Total Percentages	100 - 100

The "Academic Major" courses consist of two kinds: core requirement courses and electiv major courses. The core courses include titles such as Presentational Decision-Making, Small Group Communication, Debate, Reasoning in Communication, Judicial Communication Theory, Persuasion, and Nonverbal Communication. Only two of these courses are specially designed fo Pre-Law students (Presentational Decision-Making and Judicial Communication Theory), while the other courses include units and examples which relate law to communication.

The "Correlated Complement for Law School" is decided upon by the student and his academ advisor from a series of suggested courses mentioned in the *Pre-Law Handbook*, e.g., accountin anthropology, business, computers, economics, English, history, philosophy, political science psychology, and sociology.[23] These courses are intended to complement the speech communicati courses and the all university requirements to develop a breadth of knowledge and background to prepare for legal instruction.

The "Introduction to Legal Subjects" area is intended to help the student to determine his or her interest in law by taking some undergraduate courses pertaining to law. Hopefully these courses will provide more realism about the field of law and correct some of the mis- conceptions conveyed by Perry Mason-type television lawyers.

The "electives" can be used to expand the "Correlated Complement for Law School" area, f pursuing subjects of special interest to the student, or for helping to establish a secondary vocational objective if the student does not attend or complete law school.

Third, the Pre-Law Communication Program ought to be supplemented by a series of related activities sponsored or encouraged by Speech Communication Departments. Some of the types of activities that have been sponsored are as follows:

> *Guest Speakers* (lawyers--plaintiff and defendant, judges, state's attorney general, district attorney, law professors, and legal scholars from other disciplines--speech communication, sociology, psychology, business, and anthropology).

Lectures and Interviews have also been held via long distance telephone with the aid of an AT & T 50-A Speaker-Conference Unit which enables an entire room of people to hear and speak to the other party on the telephone. This telephone system has been used to talk to prominent attorneys such as Melvin Belli and to United States Supreme Court support personnel. The cost of using this system is quite reasonable as opposed to the financial cost of fees and expenses for a personal visit.

Video Tapes of rials, jury deliberations, negotiations and debates over legal topics such as twelve-member vs. six-member juries and unanimous vs. less than unanimous verdicts.

Joint Law School Activities. For example, undergraduate pre-law students have participated in simulated law school negotiations and counseling sessions. They have been both jurors and witnesses in moot court sessions with senior law students acting as counsel with actual district court

judges presiding. Undergraduate students have also visited law school classes which employed the Socratic teaching method. These students read the cases involved for that day's class.

Judicial Intern Programs. The Office of the Administrative Assistant to the Chief Justice of the United States Supreme Court sponsors a judicial intern program. The program offers an opportunity for highly talented students (graduate or undergraduate) to gain an appreciation for the complexities of judicial administration and at the same time to contribute to the data gathering, research, and planning carried out by the judicial administrative office of the Chief Justice. Those selected for this program must be able to live in Washington, D. C. during their internship. These internships are available on a competitive basis (one applicant per school) for the Fall, Spring, and Summer terms. The interns receive no pay. Speech Communication Departments can administer the intern applications and selection process for their universities.[25]

Local intern programs can also be established with district courts, state supreme courts, and Federal Appellate courts where feasible.

Tapes from the U. S. Supreme Court. Another resource which could be utilized is the tape recorded oral arguments before the United States Supreme Court. These recordings are available for the public to hear.

Legal Forensic Events. The inclusion of legal negotiations and oral appellate arguments in forensic tournaments both for high school and college students has some benefits. Skills useful to lawyers can be developed and students attracted to Speech Communication. The Legal Communication Committee of the American Forensic Association is also studying the feasibility of this idea.

For example, a negotiation tournament might work as follows: two sides negotiate a settlement in a variety of cases (civil--plaintiff and defendant sides; divorce--husband and wife's attorneys; sports contract--player and management's attorneys and so forth). Each side receives a common detailed set of stipulated facts and also receives an additional set of confidential facts and conditions which may affect the outcome of the settlement if the other side knew the information. Each case will be a plaintiff's case in that some settlement will be made, but the crucial issue is how much is a satisfactory award--money in many cases and family support, property settlement, and visiting rights for divorce situations. A settlement must be reached within a specified time limit (e.g. 75-100 minutes) or else both sides are disqualified for future rounds.

Negotiators continue to represent the same side throughout the tournament since plaintiffs are not competing against defendants, but, as far as the tournament evaluation is concerned, one's plaintiff award is compared against other plaintiffs' awards for that round and likewise for defendant evaluation. The sides with the highest plaintiffs' awards are power matched against the lowest defendants' awards. Different situations may have to be used for each round.[26]

Stage Two: This stage of the campaign seeks to enlighten the college and university administrators to the opportunities available for pre-legal study in the Speech Communication Department. The admissions office and the university recruiters are particularly important to contact because they frequently advise high school or transfer students toward departments traditionally associated with pre-legal study. The dean of the law school can also be influential as to the majors which pre-law students declare.

Stage Three: Literature for prospective students and for university recruiters is developed in this stage. This literature consists primarily of two types: 1) a description in the university's general catalog of a well correlated pre-law communication program along with some mention of of the related legal events; and 2) special brochures or leaflets which can be handed to or mailed to prospective students, counselors, or teachers, and/or posted on bulletin boards. Both the department and the admissions office and their recruiters can distribute these brochures and leaflets.

BENEFITS

The potential benefits of establishing a pre-law communication program are encouraging. This kind of program enables us to be in more effective contact with students who we have only served on an isolated basis or through extra-curricular activities.

In the Spring of 1973, the Speech Communication Department at Drake University commenced a modest sustained campaign to develop our new Pre-Law Communication Program. The first stages

concentrated primarily within the university itself on the Drake pre-law students and the Drake Admissions Office. By the Fall semester of 1973, twenty percent of our majors were in the new program. Of the students who declared themselves as Pre-Law Communication majors, 60 percent were new majors from within the University, while the other 40 percent came from within our own department--switching from another area of emphasis. The 40 percent of the students within our department who changed their area of emphasis was viewed as desirable, for we felt that their needs and interests were being better served. Moreover, these very students served as one of the main catalytic agents to spur us on to develop the new program.

During the 1973-1974 academic year, we published our program in the General Catalog, sponsored a study tour to Washington, D. C., sponsored guest speakers on law and communication and other related activities described above. The results showed in the Fall 1974 semester enrollment figures. The incoming freshman class was double to triple over any incoming class during the previous five years, and 89 percent of these freshmen declared themselves as Pre-Law Communication majors. Currently almost 50 percent of our majors are in this new legal program. This percentage of current pre-law majors may be higher than desirable given other areas emphasis in the department. We expect this percentage of pre-legal students to level off and to fluctuate between 25 and 40 percent of the majors as students discover their interests in law or as they discover their vocational preferences changing from law to some other area. Most of the students who have changed their interest from law have remained as majors, but have selected another area of emphasis. We have noticed another benefit of this program: the students attracted are for the most part of high academic quality.[27] This is indeed an important advantage, for our field needs to become known by the quality of the students from our departments. An additional benefit of our department's effort is that the percentage of pre-law students from other majors taking nine or more semester credits (three or more courses) in the department has substantially increased.

The time is ripe for our field to actively develop pre-law communication programs and to attract a new kind of quality students--the pre-law major.

[1]Lewis B. Mayhew, "American Higher Education: Now and in the Future," *Annals of the American Academy of Political and Social Science*, 404 (November 1972), 54: "State of Iowa 1972 k-12 plus School Census" (Des Moines: The State of Iowa Department of Public Instruction, 1974) Thomas G. Mortonson, Arnold R. Alenen, and John R. Borchert, "Public College Enrollment in Minnesota's Changing Population Pattern 1970-1985" (Minneapolis: University of Minnesota, Center for Urban and Regional Affairs, January 1973), pp. 10-11; and the U. S. Census for 1970.

[2]See Darrell T. Piersol, "Non-Academic Careers for Speech Communication Majors," *Bulletin of the Assoc. of Dept. & Adm. in Speech Comm.*, 1 (October 1972), 3-6; Robert N. Hall, "Facing Employment Problems," *Bulletin of the Assoc. of Dept. & Adm. in Speech Comm.*, 1 (October 1972), 7-12; and a series of three position papers: Darrell T. Piersol, "Responsibility for Career Training," Herman Cohen, "Responsibility for General Education," *Bulletin of the Assoc. of Dept. & Adm. in Speech Comm.*, 6 (January 1974), 22-29.

[3]*Law School & Bar Admission Requirements: A Review of Legal Education in the United States Fall 1974* (Chicago: American Bar Association, 1975), pp. 35-39; *Report of the Task Force on Professional Utilization* (Chicago: American Bar Association, 1973), pp. 13-17; *Pre-Law Handbook 1974-1975* (Published by the Association of American Law Schools and the Law School Admissions Council, 1974), pp. 8 & 10; and "America's Lawyers: A Sick Profession?" *U. S. News and World Report*, 76 (March 25, 1974), 23-28.

[4]Some have suggested that three to five times as many seriously consider attending law school as are admitted; see *U. S. News*, pp. 23-24.

[5]*Report of Task Force*, p. 6.

[6]*Pre-Law Handbook*, p. 10.

[7]Maurice Rosenberg, "Let's Everybody Litigate," *Texas Law Review*, 50 (November 1972), 1349-1350.

[8]*Pre-Law Handbook*, p. 10.

[9]*Pre-Law Handbook*, p. 15.

[10]*Pre-Law Handbook*, pp. 12-16.

[11]*Pre-Law Handbook*, p. 14.

[12]*Pre-Law Handbook*, p. 9.

[13]*U. S. News*, p. 25; Warren E. Berger, "Special Skills of Advocacy Are Specialized Training and Certificates of Advocates Essential to Our System of Justice," *Fordham Law Review*, 42 (December 1973), 227-242.

[14]Warren E. Berger, "The Special Skill of Advocacy," The Fourth John F. Sonnett Memorial Lecture, Fordham University Law School, New York City, November 26, 1973; also discussions in courses taught by the author at the National College of the State Judiciary, Reno, Nevada, July 29-August 2, 1974; and discussions in lectures by the author before the American Academy

of Judicial Education, Des Moines, Iowa, December 5-7, 1974.

[15]Edward A. Tamm, "Advocacy Can Be Taught--The N. I. T. A. Way," A. B. A. J., 59 (1973), 62

[16]Berger (Speech), p. 11.

[17]Personal interview with Justice Douglas, Washington, D. C., February 21, 1974.

[18]*U. S. News*, p. 28.

[19]Speech Communication faculty at University of Oregon and University of Minnesota have regularly taught in their respective law schools.

[20]For example, Macalester College, Loyola University, and Drake University have established specialized courses and programs for pre-law students.

[21]See the Judicial Communication Theory course described in: Robert F. Forston, "Judicial Communication Theory for Pre-Law Students," paper presented to the 1974 Eastern Communication Association Convention, Washington, D. C.

[22]*Pre-Law Handbook*, p. 11.

[23]*Pre-Law Handbook*, pp. 12-17.

[24]Sponsored by Drake University Speech Communication Department.

[25]For more information about this intern program write the author or write Mark W. Cannon, Administrative Assistant to the Chief Justice, U. S. Supreme Court, Washington, D. C. 20543.

[26]Write author for sample negotiation cases.

[27]See *U. S. News*, p. 28.